

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 KEVIN DARNELL BRYANT,)	Case No. 09cv1334-WQH (MDD)
)	
12 Plaintiff,)	ORDER GRANTING IN PART AND
)	DENYING IN PART PLAINTIFF'S
13 v.)	MOTION TO COMPEL
)	
14 SELEAINA ANN THOMAS, et al.,)	[Doc. No. 70]
)	
15 Defendants.)	
_____)	

16
17 On April 9, 2012, Plaintiff in the above-entitled matter filed a Motion to
18 Compel. (Doc. No. 70). On April 27, 2012, Defendants filed a Response in
19 Opposition. (Doc. No. 74). In his Motion, Plaintiff contends that Defendants have
20 refused to provide him with requested discovery, and that Defendants' objections to
21 producing discovery are meritless. (Doc. No. 70). In their Response, Defendants
22 contend that Plaintiff's Motion should be denied because it fails to state why
23 Plaintiff is entitled to relief. (Doc. No. 74).

24 Background

25 In his First Amended Complaint, Plaintiff, a state prisoner, alleges that
26 Defendant Thomas, a family nurse practitioner, was deliberately indifferent to his
27 serious medical needs when she repeatedly refused to treat him after an injury.
28 Plaintiff states that he fell from the top bunk of his cell three times, and then

1 requested medical treatment. Plaintiff contends that Defendants repeatedly
2 ignored his requests for treatment and deliberately hindered his recovery. Id.
3 Specifically, Plaintiff contends that Defendant Thomas refused to honor his
4 previously issued medical chrono, forced him to return a neck brace even though he
5 still needed it, and failed to prescribe pain medication. (FAC at ¶7-30).

6 Legal Standard

7 The Federal Rules of Civil Procedure generally allow for broad discovery,
8 authorizing parties to obtain discovery regarding “any nonprivileged matter that is
9 relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). Also, “[f]or good
10 cause, the court may order discovery of any matter relevant to the subject matter
11 involved in the action.” Id. Relevant information for discovery purposes includes
12 any information “reasonably calculated to lead to the discovery of admissible
13 evidence,” and need not be admissible at trial to be discoverable. Id. There is no
14 requirement that the information sought directly relate to a particular issue in the
15 case. Rather, relevance encompasses any matter that “bears on” or could
16 reasonably lead to matter that could bear on, any issue that is or may be presented
17 in the case. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 354 (1978). District
18 courts have broad discretion to determine relevancy for discovery purposes. See
19 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). Similarly, district courts have
20 broad discretion to limit discovery where the discovery sought is “unreasonably
21 cumulative or duplicative, or can be obtained from some other source that is more
22 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C). Limits
23 also should be imposed where the burden or expense outweighs the likely benefits.
24 Id.

25 A party may request the production of any document within the scope of Rule
26 26(b). Fed. R. Civ. P. 34(a). “For each item or category, the response must either
27 state that inspection and related activities will be permitted as requested or state
28 an objection to the request, including the reasons.” Id. at 34(b). The responding

1 party is responsible for all items in “the responding party’s possession, custody, or
2 control.” Id. at 34(a)(1). Actual possession, custody or control is not required.
3 Rather, “[a] party may be ordered to produce a document in the possession of a
4 non-party entity if that party has a legal right to obtain the document or has control
5 over the entity who is in possession of the document. Soto v. City of Concord, 162
6 F.R.D. 603, 620 (N.D.Cal.1995).

7 A motion to compel is appropriate where a party fails to produce relevant,
8 non-privileged documents requested pursuant to Rule 34. Fed. R. Civ. P. 37(a)(3).
9 The party seeking the motion to compel discovery has the burden of informing the
10 court why the defendant’s objections are not justified or why the defendants’
11 responses are deficient. Id.

12 Discussion

13 As an initial matter, Defendants contend that Plaintiff’s Motion should be
14 dismissed because Plaintiff has not stated with particularity the grounds upon
15 which he is entitled to relief. Id. at 2. Defendants assert that Plaintiff fails to
16 address Defendants’ specific objections or give a reasonable explanation as to why
17 the Court should compel responses to his request for the production of documents.
18 Id.

19 Plaintiff does make specific arguments with regard to his Requests for
20 Production of Documents Nos. 14 and 15. As to these requests, Plaintiff addresses
21 Defendants’ objections, and explains why he believes he is entitled to the requested
22 discovery. (Doc. No. 70 at 4).

23 As to the rest of Plaintiff’s requests, however, the Court agrees with
24 Defendants that Plaintiff has failed to state with specificity why he is entitled to
25 discovery. Plaintiff’s conclusory assertion that Defendants’ objections are in bad
26 faith are not grounds for granting his Motion. Fed. R. Civ. P. 37(a)(3).
27 Nevertheless, out of abundance of caution the Court conducted an independent
28 review of Plaintiff’s requests and Defendants’ responses and finds that Defendants’

1 objections are proper, and that no additional discovery is warranted. Accordingly,
 2 Plaintiff's Motion is **DENIED** as to all requests for discovery other than his
 3 Requests for the Production of Documents Nos. 14 and 15.

4 As to Plaintiff's Requests for the Production of Documents Nos. 14 and 15,
 5 Plaintiff's Motion is **GRANTED IN PART** and **DENIED IN PART**.

6 In Request No. 14, Plaintiff requests:

7 Any and all documents, records and files generated by all
 8 the medical review boards and committees and meetings at
 9 CAL of defendant Thomas supervisory staff in their entirety
 10 regarding the reviews and approvals of all orders, reports,
 11 diagnosis and overall medical care of plaintiff done by
 12 Thomas in its entirety.

13 In Request No. 15, Plaintiff requests:

14 Any and all documents created by the medical review
 15 boards, committees, and the CMO Fr. Martin Levin
 16 regarding and resulting from any and all complaints,
 17 grievances, 602 appeals and court actions filed on
 18 defendant Thomas regarding allegations of her medical
 19 negligence, incompetence, malpractice, deliberate
 20 indifference, wrongful death, gross negligence and failure
 21 to provide medical care from the first day of her
 22 employment to the last including all CMO's and each and
 23 every CDCR prison adult & juvenile that she has worked at.
 24 All documents and info provided to CDCR by defendant
 25 Thomas regarding her medical education, training, work
 26 history, and all references and all discoverable records from
 27 her employment file.

19 Defendants objected to these requests as irrelevant and overly broad.
 20 Defendants contend that because Plaintiff's claim against Thomas is for deliberate
 21 indifference to serious medical needs, Plaintiff's requests for documents regarding
 22 any other alleged misconduct is irrelevant.

23 As to Request No. 14, Plaintiff's Motion is **GRANTED IN PART**.
 24 Documents created by supervisory officials concerning Thomas' treatment of
 25 Plaintiff are relevant as they may bear on whether Thomas acted with deliberate
 26 indifference towards the Plaintiff. While Defendants are correct that many of these
 27 documents are protected by the official information privilege, that does not bar
 28 discovery. Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990).

1 Official information is discoverable if the potential benefit in discovery outweighs
2 any potential disadvantages. Id. Here, the Court finds that with regard to
3 documents created by Thomas' supervisors that evaluate Thomas' care or treatment
4 of the Plaintiff, the potential benefits outweigh the asserted privilege. As such,
5 Defendants are **ORDERED** to provide Plaintiff with the requested documents no
6 later than **June 15, 2012**. To the extent that Plaintiff's request seeks any other
7 documents, it is **DENIED**.

8 As to Request No. 15, Plaintiff's requests are overly broad and request
9 several categories of irrelevant documents. Plaintiff's claims against Defendant
10 Thomas allege that Thomas refused to examine him, lied about ordering pain
11 medication, and intimidated Plaintiff into removing his neck brace. As these are
12 specific allegations of deliberate action, documents regarding past instances of
13 Thomas' negligence or malpractice are irrelevant to Plaintiff's claim. In the
14 alternative, Plaintiff argues that the requested documents are relevant as
15 impeachment evidence since Thomas has been designated as an expert. This does
16 not rescue Plaintiff's requests. Mere allegations of past misconduct are not relevant
17 to Thomas' credentials to testify as an expert.

18 Only documents detailing past instances where Thomas was found to be
19 deliberately indifferent to patients or found to have improperly refused to treat
20 patients are relevant to Plaintiff's claims. Accordingly, the Court will address
21 Defendants' other objections as to this category of documents. As to all other
22 categories of documents, Plaintiff's Motion is **DENIED**.

23 As to documents detailing past instances where Thomas was found to have
24 improperly refused to treat patients or was found to have been deliberately
25 indifferent with regard to patient care, Defendants also object to Plaintiff's requests
26 on the grounds that, to the extent that Plaintiff seeks Defendants' personnel files,
27 responses may invade privacy rights of the Defendant or third parties and would
28 violate the federal Health Insurance Portability and Accountability Act ("HIPAA").

1 Defendants further object to disclosure of personnel files on the grounds that such
2 files are protected by the official information privilege. Plaintiff counters that he is
3 not seeking personnel records, he is only seeking documents pertaining to
4 allegations or complaints against Thomas.

5 Defendants are correct that government personnel files are generally
6 considered official information. Sanchez, 936 F.2d at 1033. Id. Further weighing
7 against disclosure is the fact that many of the requested documents are likely to
8 contain confidential medical information of third parties which are protected from
9 unauthorized disclosure by HIPAA. Disclosure of the confidential medical
10 information of third parties requires that the party seeking discovery provide
11 assurances to the healthcare provider that reasonable efforts have been made to
12 secure a qualified protective order. 45 C.F.R. § 164.512(e). Plaintiff has provided
13 no such assurances and accordingly the Court will not order the disclosure of
14 confidential medical information of third parties.

15 Weighing the possible benefits of discovery against both the Defendants'
16 asserted official information privilege, and the privacy concerns of third party
17 inmates, the Court finds that there is a narrow category of documents where
18 discovery is appropriate. Plaintiff's Motion is **GRANTED** as to any documents
19 created by supervisory officials evaluating Thomas' refusal to treat patients and
20 finding it unjustified or finding that Thomas was deliberately indifferent to patient
21 needs. To the extent that such documents exist, and to the extent that they do not
22 contain the confidential medical information of third parties who have not
23 consented to disclosure, Defendants are **ORDERED** to produce such documents as
24 provided below. To the extent that such documents exist and include confidential
25 medical information of third parties who do not consent to disclosure, the
26 documents are to be produced with the identities and confidential medical
27 information that would tend to identify the third parties redacted.

1 Otherwise, Plaintiff's Motion is **DENIED**.

2 Conclusion

3 For the foregoing reasons, Plaintiff's motion to compel is **GRANTED IN**
4 **PART AND DENIED IN PART**. To the extent that Defendants have been ordered
5 to produce documents, such documents or a response stating that responsive
6 documents do not exist, must be served upon Plaintiff within thirty (30) days of the
7 date of this Order.

8 **IT IS SO ORDERED.**

9 DATED: June 1, 2012

10
11 
12 Hon. Mitchell D. Dembin
13 U.S. Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28